

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1142

**United States Court of Appeals
For the Second Circuit**

B
P/S

UNITED STATES OF AMERICA,

Appellee,

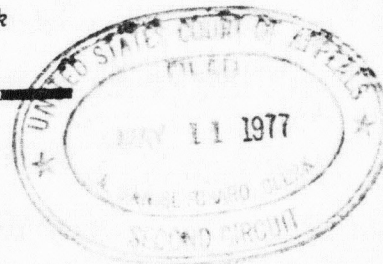
v.

ANTHONY CICCONE, a witness
before the Grand Jury,

Contemnor-Appellant.

*On Appeal from an Order of the United States
District Court for the Southern District of New York*

APPELLANT'S APPENDIX



FRIEDMAN, FRIEDMAN, LEVY
& BOTTLIGLIERI, P.C.

Attorneys for Contemnor-Appellant

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New York, New York 10021

(212) 371-9133

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

PROCEEDINGS

- 47 Dec. 28-76 Filed one brown envelope contents ordered sealed and not to be opened, except upon further order of the court. MOTLEY, J.
- 56 Dec. 30-76 Filed one brown envelope--To be sealed and unsealed only at the direction of the undersigned or another USD Judge. Griesa, J.
- 56 Jan. 4-77 Filed one brown envelope--To be sealed and unsealed only at the direction of the undersigned or another U.S. Dist. Judge.
- 02 IN RE: WITHDRAWING FROM IMPOUNDMENT AND UNSEALING ORDER M19-97(3), etc. Filed order that the aforesaid documents be withdrawn from their place of impoundment and transported to Courtroom 2703 and at the conclusion of said hearing the aforesaid documents will be re-sealed and returned to the custody of the Clerk's office --Weinfeld, J.
- 56 Jan. 10-77 Filed one brown envelope to be sealed & unsealed at the direction of the undersigned or another USDJ. Griesa, J.
- 56 Jan. 14-77 Filed one brown envelope to be sealed & unsealed at the direction of the undersigned or another USDJ. Griesa, J.
- 56 Jan. 19-77--Filed one brown envelope to be sealed & unsealed only at the direction of the undersigned or another US Dist. Judge., Griesa
- 56 Jan. 20-77--Filed one brown envelope to be sealed or unsealed only at the direction of the undersigned or another Federal Judge Duffy, J.
- 52 Jan. 27-77-- Filed one brown envelope to be sealed or unsealed only at the direction of the undersigned or another Federal Judge.
- 52 Feb. 10-77--Filed one brown envelope ordered sealed & to be unsealed only by the undersigned or by another federal judge.
- 52 IN RE: US AUTHORIZING THE INTERCEPTION OF ORAL COMMUNICATIONS---Filed one brown envelope ordered sealed & to be unsealed only by the undersigned or another federal judge. (AUSA Robert B. Mazur.)
- 38X March 2-77 Filed one large brown envelope to be sealed or unsealed only at the direction of the undersigned or another federal judge, Cooper.
- 52 March 2-77 Filed one large brown envelope ordered sealed or unsealed only by the undersigned or another US judge. Tenney, J.
- 45 IN RE: ANTHONY CICCONE CONTEMPT PROCEEDINGS,---Filed order that Anthony Cicccone be committed to the custody of the Attorney General of US at MCG until willing to testify before Grand Jury. Frankel, J.
- 44 March 3-77--Filed one brown envelope ordered sealed & to be unsealed only by the the undersigned or by another Federal Judge. Tenney J. AUSA Robert B. Mazur.
- 44 March 7-77---Filed one brown envelope ordered sealed and to be unsealed only by the undersigned or by another federal judge. AUSA Robert B. Mazur, Tenney, J.
- 43 March 9-77--Filed one brown envelope ordered sealed & unsealed at the direction of the undersigned or another USDJ. Bryan, J.
- 45 IN RE: ANTHONY CICCONE---Filed notice of appeal from the order committing him to the custody of the Attorney General.

BEST COPY AVAILABLE

ORDER GRANTING IMMUNITY 02A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE ANTHONY CICCONE, :
A WITNESS BEFORE THE : ORDER
GRAND JURY :
-----X

On the application of Robert B. Fiske, Jr., United States Attorney
for the Southern District of New York, filed in this matter on

And it appearing to the satisfaction of the Court:

1. That ANTHONY CICCONE has been called to testify before the Grand
Jury of the United States presently empaneled within this District; and

2. That ANTHONY CICCONE has refused to testify on the basis of his
privilege against self incrimination; and

3. That in the judgment of the said United States Attorney, the
testimony from said ANTHONY CICCONE may be necessary to the public interest;
and

4. The aforesaid application filed herein has been made with the
approval of the Assistant Attorney General in charge of the Criminal Division
of the Department of Justice, pursuant to the authority vested in him by
Title 18, United States Code, Section 6003 and 28 C.F.R. 0.175:

NOW, THEREFORE, it is ordered pursuant to Title 18, United States
Code, Section 6002, that the said ANTHONY CICCONE give testimony which he
refuses to give on the basis of his privilege against self incrimination as to
all matters about which he may be interrogated before said Grand Jury, and it
is further ordered that no testimony or other information compelled hereunder,
or any information directly or indirectly derived from such testimony or other

03A

Information, may be used against the said ANTHONY CICCONE in any case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this Order.

This Order shall become effective only if after the date of this Order the said ANTHONY CICCONE refused to testify or provide other information on the basis of his privilege against self incrimination.

Dated: New York, New York

March 2, 1977

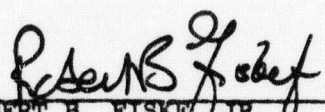
Maurice E. Finkel
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE ANTHONY CICCONE, : APPLICATION
A WITNESS BEFORE THE :
GRAND JURY :
-----X

ROBERT B. FISKE, JR., United States Attorney for the Southern District of New York, hereby makes application for an order pursuant to the provisions of Title 18, United States Code, Section 6001, et seq., compelling ANTHONY CICCONE to give testimony which he refused to give on the basis of his privilege against self incrimination, as to all matters about which he may be interrogated before the Grand Jury of the United States presently empaneled within this District, and respectfully alleges as follows:

1. The said ANTHONY CICCONE has been called to testify or provide other information before said Grand Jury.
2. In the judgment of the undersigned, testimony from said witness may be necessary to the public interest.
3. The said witness has refused to testify on the basis of his privilege against self incrimination.
4. This application is made with the approval of Richard L. Thornburgh, Assistant Attorney General of the Criminal Division, Department of Justice, pursuant to the authority vested in him by Title 18, United States Code, Section 6003 and 28 C.F.R. 0.175. A copy of this letter from said Assistant Attorney General expressing such approval is attached hereto.



ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York

Dated: New York, New York

April 2, 1977

05A

Department of Justice
Washington 20530

FEB 16 1977

Honorable Robert B. Fiske, Jr.
United States Attorney
Southern District of New York
New York, New York 10007

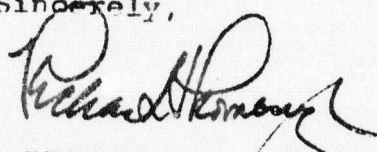
Attention: Mr. Michael D. Abzug
Assistant United States Attorney

Re: Grand Jury Investigation

Dear Mr. Fiske:

Pursuant to the authority vested in me by 18 U.S.C. 6003(b) and 28 C.F.R. 0.175(a), I hereby approve your request for authority to apply to the United States District Court for the Southern District of New York for an order pursuant to 18 U.S.C. 6002-6003 requiring Anthony Ciccione to give testimony or provide other information in the above matter and in any further proceedings resulting therefrom or ancillary thereto.

Sincerely,


RICHARD L. THORNEBURGH
Assistant Attorney General
Criminal Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

IN RE ANTHONY CICCONE, :

A WITNESS BEFORE THE :

AFFIDAVIT

GRAND JURY :

- - - - - x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

MICHAEL D. ABZUG, being duly sworn, deposes and
says:

1. Affiant is an Assistant United States Attorney
in the office of the United States Attorney for the Southern
District of New York.

2. This affidavit is submitted in support of the
application for an order directing ANTHONY CICCONE to answer
questions before a Grand Jury.

3. That said ANTHONY CICCONE has refused to testify
before the said Grand Jury on the basis of his privilege
against self incrimination.

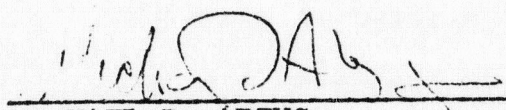
4. This application for immunity is made with the
approval of the Assistant Attorney General of the United
States and the United States Attorney for the Southern Dis-
trict of New York.

5. This application for immunity is based on the
belief that the information sought is necessary and material
to the investigation now being conducted by the said Grand

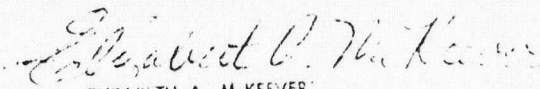
07A

Jury with respect to violations of Sections 371 and 1955 of Title 18, United States Code.

6. This application for immunity is made in good faith.


MICHAEL D. ABZUG
Assistant United States Attorney

Sworn to before me this
28th day of *March*, 1977.


ELIZABETH A. MCKEEVER
Notary Public, State of New York
Exp. 4/25/82
Qualified in Richmond County
C. 12/1/78

ORDER OF CONFINEMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Q8A

-----X
IN THE MATTER OF ANTHONY CICCONE, :
CONTEMPT PROCEEDING UNDER TITLE 28, :
UNITED STATES CODE, SECTION 1826(a) :
-----X

ORDER
M19-97(45)

Application having been made by the Government before this Court on March 2, 1977, for an order affording ANTHONY CICCONE "use immunity" under Section 6002, et seq., of Title 18, United States Code, in connection with his appearance before the October 16, 1975, Special Grand Jury as a witness in an investigation into alleged violations of Sections 1955 and 371 of Title 18, United States Code, and said order having been issued on March 2, 1977, and ANTHONY CICCONE having thereafter on March 2, 1977, continued to refuse to answer questions put to him relating to matters falling within the scope of said grant of immunity, and application having been made by the Government for an order of confinement pursuant to Title 28, United States Code, Section 1826(a), and the Court being satisfied that ANTHONY CICCONE has refused unlawfully to testify before said Grand Jury on March 2, 1977, with full understanding of his obligation to testify, it is hereby

ORDERED that ANTHONY CICCONE be committed to the custody of the Attorney General of the United States at the Metropolitan Correctional Center, New York, New York, until such time as he is willing to testify before said Grand Jury or until the expiration of the term of said Grand Jury (April 15, 1977, subject to an eighteen month extension), whichever first occurs, but said confinement in no event to exceed eighteen months.

DATED: NEW YORK, NEW YORK
March 2, 1977

Maurice E. Frankel
UNITED STATES DISTRICT JUDGE

MEDICAL REPORT OF
DR. IMPASTATO

09A

David J. Impastato, M.D.

46 FIFTH AVENUE

NEW YORK, NEW YORK 10011

TELEPHONE 254-2969

January 7, 1977

Richard D. Friedman, Esq.
655 Madison Avenue
New York, New York 10021

Re: Ciccone, Anthony

Dear Mr. Friedman:

The following is a report on Mr. Ciccone.

The above named, Mr. Anthony Ciccone, has been under my care since 22 Dec., 1944. He has been suffering from convulsive seizures, for which he has taken the anti-convulsives, dilantin and phenobarbital. These medications control his convulsive seizures except during periods of stress when the convulsions are apt to recur.

He had a convulsion in the summer of 1974.

Recently, he was apparently implicated in a dice game and is slated to appear before the grand jury to testify. This involvement has been a source of great stress to him. He has become worried, tense and depressed.

On the 11th of Dec., 1976, he had another convulsive seizure, which was probably due to the stress of his situation.

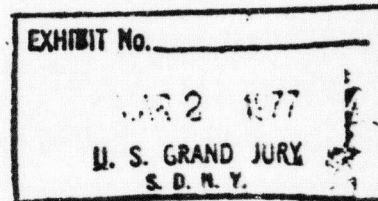
Sincerely yours,

David J. Impastato
David J. Impastato, M.D.

10A

MEDICAL REPORT OF
DR. MOLDAVER

JOSEPH MOLDAVER, M. D.
30 EAST 60TH STREET
NEW YORK, N. Y. 10022



March 2, 1977

Mr. Michael Abzug
Assistant United States Attorney
Southern District of New York
1 St. Andrews Plaza - Room 330
New York, New York 10007

RE: Anthony Ciccione

Dear Mr. Abzug:

Mr. Anthony Ciccione was seen in my office on March 1, 1977 at 4:00 P.M. for neurological consultation.

He is 59 years old and gave the history of convulsive disorders. He indicated that his spells started in 1944. He described his first seizure as follows: he suddenly saw red and green lines in his visual fields; those became brighter and bigger and were rotating in circles, then everything became vague and he felt that his head, neck and body were twisted to the right. He then lost consciousness and had a generalized convulsion.

Those spells happened frequently and were often precipitated by heavy drinking. He was advised to stop drinking which he has done for the past twenty years, though he still takes some wine with his meals. He was suggested to take anticonvulsants; namely, Dilantin, 1½ grain three times a day, and one Phenobarbital, 1½ grain upon retiring.

He has been taking the same medication since 1944.

He told me that for many years he has not had any convulsions but in the Winter of 1974 he had one spell, in December 1976 he had another one, and according to him, a third one six weeks ago.

He said that he still suffers from his aura; namely, visual attacks of red and green colors that are sometimes accompanied by a foul odor and his head feels heavy. These are of short duration and are not followed by a convulsion.

He has had in the past, some electroencephalograms and on one occasion fifteen years ago, a ventriculogram. I did not have the results of those tests.

The neurological examination was essentially normal.

Cranial nerves were normal.

Visual fields were normal to confrontation.

Deep and superficial reflexes were symmetrical and normal.

Sensory examination showed no pathology.

Speech was normal.

He showed good strength and coordination throughout.

Opinion: Mr. Anthony Ciccione suffers from convulsive disorder characterized by a visual aura and sometimes, he also has a hallucination of smell preceeding these seizures.

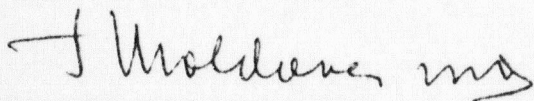
For the past three years, according to him, he has had three spells of convulsions. He still suffers from spells of aura without convulsions. Those have been present all along since 1944 though they are by far, less frequent; almost three per month for the past few years.

It is clear that what he needs is a better adjustment of his medication. I was surprised to know that this was not done since he claimed that he has had three convulsions since 1974, and still suffers from auras.

He has been taking the same medication since 1944. One can obviously attempt to do better and most likely have his spells under control.

He should consult with his neurologist but right now, if he has to testify, he should already increase his Dilantin capsules to four a day.

Sincerely,



Joseph Moldaver, M. D.
Diplomate in Neurology and Psychiatry
Formerly Associate Clinical Professor of Neurology,
Columbia Medical School, and
Director of Neurology, The Hospital for Special Surgery -
Cornell Medical Center

JM:dm

PROCEEDINGS BEFORE HON. MARVIN FRANKEL, FEB. 28, 1977

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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GRAND JURY PROCEEDINGS

RE: ANTHONY CICCONE

Miscellaneous

----- x

B e f o r e :

HON. MARVIN E. FRANKEL,
District Judge

New York, New York
February 28, 1977
4:40 p.m.

APPEARANCES:

ROBERT B. FISKE, JR.,
United States Attorney
Southern District of New York
MICHAEL D. ABZUG, Esq.,
Assistant United States Attorney

RICHARD D. FRIEDMAN, Esq.,
Attorney for Witness

md:mg

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MR. ABZUG: Good afternoon, your Honor.

Your Honor, the government has an application for this Court to order a witness before the grand jury, Mr. Anthony Ciccone, to testify pursuant to a lawfully issued subpoena which was returnable on today's date at three o'clock.

Briefly, the facts are these, your Honor:

In December, specifically on December 13, 1976, Mr. Ciccone was scheduled to appear before a special grand jury which was investigating alleged violations of federal law, specifically those laws prohibiting syndicated gambling and conspiring to do so.

Shortly before Mr. Ciccone was scheduled to appear on December 13, I received a call from his counsel, Mr. Richard Friedman, who is here today, in which he indicated to me that Mr. Ciccone would not be able to appear as scheduled on December 13 because he was having fainting spells.

I agreed to adjourn his grand jury appearance on condition that Mr. Friedman forward to my office a letter from Mr. Ciccone's doctor verifying the fact that Mr. Ciccone was unable to appear on the 13th because of these fainting spells.

md:mg

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I wrote a letter to Mr. Friedman which I have in my file, requesting such a letter to be delivered to my office no later than December 31, 1976.

I didn't hear from Mr. Friedman's office.

Consequently, I issued, or more properly, the grand jury issued another subpoena which was served on February 24, 1977, which was returnable today at three o'clock.

Mr. Friedman and Mr. Ciccone appeared today pursuant to that subpoena, and gave me a letter from a Dr. David Impastato, a copy of which I have here for your Honor's consideration.

This letter was offered in support of Mr. Ciccone's position today that he was medically unfit to testify.

Mr. Ciccone was brought before the grand jury. He was asked a number -- advised the purpose of his appearance, asked a number of substantive questions.

He refused to testify on two grounds: the first, that he was medically unfit, and, second, because he was a target of the investigation and protected by his Fifth Amendment privilege.

With respect to his medical excuse, your Honor, the government believes that it is not sufficient, that he

1 md:mg

2 is in fact medically fit to testify today.

3 The letter that is before your Honor merely
4 alleges that Mr. Ciccone is an epileptic. He is taking
5 medication.

6 I spoke to Mr. Friedman today. He is currently
7 under medication right now, which are anticonvulsives
8 which are designed to obviate any problem that Mr. Ciccone
9 would have before the grand jury.

10 I took the precaution of securing the number of
11 Beekman-Downtown so if we have any problem -- I don't be-
12 lieve we will in the light of Mr. Ciccone's medication --
13 but if we have any problem, we can have medical assistance
14 in very short order. So there is nothing in that letter,
15 as your Honor will notice, that says that Mr. Ciccone is
16 unfit to testify; it merely indicates that he is an epi-
17 leptic and is currently under medication.

18 THE COURT: I don't find where it says he is
19 an epileptic.

20 MR. ABZUG: It says he is subject to convulsive
21 seizures, your Honor. I stand corrected.

22 THE COURT: I don't know if you need to stand
23 corrected or not.

24 MR. ABZUG: Mr. Ciccone indicated to me in
25 the grand jury he was an epileptic.

1 md:mg

5

2 THE COURT: He certainly hasn't had a very
3 vivid history of frequent convulsions: one in 1974 and
4 one in 1976. But let me hear from Mr. Friedman.

5 MR. FRIEDMAN: If your Honor please, I don't
6 dispute substantially all that Mr. Abzug has said as to
7 the history of this situation, and you can see that the
8 note which Mr. Abzug refers to is dated January 7, 1977, and
9 so until such time as I had received it, I was not in a
10 position to turn it over to the government.

11 THE COURT: When did you turn it over to the
12 government?

13 MR. FRIEDMAN: I gave it to Mr. Abzug today
14 when I came here.

15 THE COURT: Today is February 28th.

16 MR. FRIEDMAN: I appreciate that fact, but
17 since the date this matter was on before the last grand
18 jury, no further date had been fixed until last week when
19 Mr. Ciccone was served with another subpoena and my office
20 was notified by telephone.

21 THE COURT: Are you telling me between December
22 13 and December 31, in an effort to comply with what you
23 undertook to do, you couldn't find a physician who could
24 work up a letter like this in time for you to meet your
25 obligation?

md:mg

6

MR. FRIEDMAN: My obligation, Judge, was to notify by letter to support Mr. Ciccone's position.

I asked Mr. Ciccone to have his doctor write me such letter. I spoke to the doctor on the telephone myself and asked that he send me such letter.

I was advised that Mr. Ciccone was undergoing certain tests that were being administered by the doctor, including an encephalogram, and certain other laboratory tests, and it was only on, as I said, January 7, 1977, that I was able to receive a letter.

I may be an attorney, but I am not my doctor's keeper nor my client's doctor's keeper. I did that which I could do within my power as an attorney.

I advised Mr. Abzug, I believe, during the proceedings, that when I got the letter, I would send it to him. Then, of course, we received no other date until last week when the subpoena was served and my office was telephoned, and I had Mr. Ciccone come to my office in response to his obligation to appear, and I advised Mr. Abzug that we would appear today.

I believe that-- and then today I gave him this copy of the letter of which your Honor has the original.

Mr. Ciccone takes the position that he is under stress, he fears for his health, he says he feels it would

1
2 be too much of a strain.

3 I recognize that which Mr. Abzug comments upon
4 in the letter and that there is no expression of opinion
5 that at least as of today the doctor says that if Mr.
6 Ciccone appears and testifies, he is apt to have a con-
7 vulsion.

8 I can only refer to the first paragraph of the
9 letter, the concluding sentence of that paragraph, indi-
10 cating that the medications control Mr. Ciccone's con-
11 vulsive seizures except during periods of stress when such
12 convulsions are apt to recur.

13 The U. S. Attorney asked if I would consent
14 to have a government-appointed physician examine him on
15 this issue and I said I was under the impression that if
16 the requirement were to be imposed by the Court that he would
17 do that and therefore I did in advance consent to such an
18 examination.

19 The government chose, instead, however, to
20 come down before your Honor apparently for a ruling to
21 mandate Mr. Ciccone's testifying.

22 Mr. Ciccone is still willing to be examined
23 by a physician, and that is where we stand at the moment,
24 sir.

25 THE COURT: I may find that an acceptable

1 md:m g

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2 resolution of the matter. One way or another I believe,
3 based on this letter, he is going to be examined whether
4 it is in a doctor's office or in a hospital room or what-
5 ever. If he wants to go through the business of being
6 examined by a doctor selected by the government and then
7 testify, that's all right, but I don't think the fact
8 that over a period of two and a half years he had two
9 convulsions in a life which all of us experience as
10 stressful, should be a reason not to testify.

11 Are you willing to have a doctor look at him?

12 MR. ABZUG: With all due respect, I would
13 prefer not to have the Court mandate such procedure. I
14 don't think that there is a prima facie showing on the
15 letter that has been given to your Honor today that he is
16 incapable of testifying before a grand jury, and I think
17 with all due respect, such an action would be superfluous
18 and further delay a grand jury proceeding which has al-
19 ready been delayed unnecessarily, in my view, three months.

20 THE COURT: But you didn't move with breakneck
21 speed, either. You began in December. Now it is the
22 beginning of March, and you are back.

23 MR. ABZUG: I was waiting for Mr. Friedman to
24 forward a letter.

25 THE COURT: You were waiting for him, and he was

1 md:mg

2 waiting for a doctor, but nobody was in a very big hurry.

3 MR. ABZUG: May I make an additional point?

4 THE COURT: Yes.

5 MR. ABZUG: I told Mr. Ciccone in the grand jury
6 that the government would do everything it could to ac-
7 commodate him and make his appearance as least stressful
8 as possible.

9 We are going to make an application to grant
10 him testimonial immunity, which means that his testimony,
11 of course, can't be used against him. That's been ex-
12 plained to him.

13 I did also indicate to Mr. Ciccone that if he
14 felt that his appearance would take an hour and if an hour
15 of testimony would be too arduous for him, that I would
16 consent to having his testimony be broken up in two half-
17 hour segments, and, of course, he is represented by capable
18 counsel, Mr. Friedman, who will be there to aid him legally
19 during the course of the grand jury inquiry.

20 I told Mr. Ciccone that if at any time during the
21 course of the grand jury he wanted to consult with Mr.
22 Friedman, he only need ask, and the grand jury foreman
23 would give him that opportunity.

24 So I think under these conditions, Judge, a ruling
25 by your Honor that Mr. Ciccone should testify -- actually

1 md:mg

2 today, it is too late, the grand jury had been adjourned,
3 but they will reconvene Wednesday at two o'clock.

4 THE COURT: Can you have him examined tomorrow?
5 Can you have a doctor who will look at him tomorrow?

6 MR. ABZUG: I will make the arrangements, your
7 Honor.

8 THE COURT: Make those arrangements.

9 This letter, I agree with Mr. Abzug, is not over-
10 whelming in its persuasiveness, but the timing is such --
11 we are dealing with a man's health, and I am not a physi-
12 cian -- the timing is such that we can perfectly well have
13 him examined tomorrow, tell the doctor to give me a report
14 tomorrow night or Wednesday morning, and if I agree with
15 the civilized safeguards Mr. Abzug has proposed, the doctor
16 thinks he is as safe as we can reasonably expect people
17 to be in this life, I will order him on Wednesday morning
18 to go before the grand jury, and no time will have been
19 lost.

20 So I am ordering you orally, counsel, and
21 Mr. Ciccone, to collaborate in arranging for this medical
22 examination tomorrow, and then proceed from there as I have
23 instructed, reporting back to me on Wednesday for such
24 further orders as may be just in the circumstances.

25 If you like -- is this a copy of the letter?

md:mg

11

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2 MR. ABZUG: Yes.

3 THE COURT: Why don't you keep it then. I
4 will give it back to you.

5 MR. ABZUG: Thank you, your Honor.

6 MR. FRIEDMAN: If your Honor please, I am sure
7 that your Honor understands that I am representing
8 Mr. Ciccone in the light of where he has asked me to present
9 his physical impairment to your Honor. I understand the
10 letter, and I do think, and that's why I agree that an
11 examination would be most appropriate, as I said before.

12 Whatever may happen as a result of that will
13 happen.

14 THE COURT: Sure. OK. That's what I am
15 ordering.

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23A

PROCEEDINGS BEFORE HON. MARVIN FRANKEL MARCH 2, 1977
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

	x	
In re:	x	
Anthony Ciccone,	x	
a witness before the	x	M 11-188
Grand Jury.	x	

New York, N. Y. 3/2/77

2:15 pm

Room 506

Before:

Hon. Marvin Frankel,

District Judge.

A P P E A R A N C E S:

Robert B. Fiske, Jr., Esq.
United States Attorney;
Michael Abzug, Esq., (Strike Force)
of counsel.

Richard Friedman, Esq.,
Attorney for witness Ciccone.

- - -

1 THE CLERK: In the Matter of U.S.A. v
2 Anthony Ciccone.

3 MR. ABZUG: Your Honor, in accordance with
4 your directive Monday, Mr. Ciccone has been examined by
5 a neurologist, Dr. Moldaver yesterday. Dr. Moldaver
6 has written a report which I would like now to submit
7 to the Court, with your Honor's permission (handing to
8 Court).

9 THE COURT: All right.

10 MR. ABZUG: Defense counsel has been provided
11 with a copy of this report, your Honor.

12 THE COURT: (After examining) All right; is
13 there an application at this time, Mr. Abzug?

14 MR. ABZUG: Your Honor, in light of the
15 doctor's letter, I am informed by Mr. Friedman that he
16 did bring his medication today to the grand jury.

17 The government has two applications:

18 First, that your Honor order the witness, Mr.
19 Ciccone, to testify before the grand jury in accordance
20 with its subpoena, and make a finding that he is med-
21 ically fit to testify.

22 And, secondly, the government has an appli-
23 cation, to grant Mr. Ciccone testimonial immunity pur-
24 suant to Title 18, Section 6002, which I would like now
25

1 now to offer for your Honor's consideration.

2 THE COURT: Yes, I will do that.

3 You do not have any objection to the grant
4 of immunity.

5 MR. FRIEDMAN: I am sorry, I did not hear
6 your Honor just now.

7 THE COURT: You do not object to the grant
8 of immunity.

9 MR. FRIEDMAN: Well, I do not think that the
10 Court has the power to grant immunity until the proper
11 statutory procedure has been followed, which I do not
12 think has been followed in this case. I think the
13 statute has to be strictly construed. As I understand
14 it, questions must be put to the witness which he re-
15 fuses to answer thereafter.

16 THE COURT: On the basis of his privilege?

17 MR. FRIEDMAN: On the basis of his priv-
18 ilege.

19 THE COURT: And you say he hasn't asserted
20 his privilege.

21 MR. FRIEDMAN: I say after that--

22 THE COURT: But you say he has not yet.

23 MR. FRIEDMAN: Not to a specific question,
24 but assuming that specific questions were asked, and
25

1 he says he asserts his privilege, then I think the statute
2 provides that the United States Attorney may make appli-
3 cation to the Attorney General in charge of the Criminal
4 Division of the Department of Justice who may then con-
5 sider the application of the United States Attorney for
6 the district concerned, and thereafter may authorize him
7 to make the application which is now being made. I
8 do not believe he can do it in an anticipatory fashion.

9
10 THE COURT: I do not think that the statute
11 ought to be read to stultify the Justice Department.

12 If your client has not yet pleaded the priv-
13 ilege, and you want to go through these motions, I will
14 not sign an order of immunity. If you know that he is
15 going to plead the privilege, it might be argued that
16 perhaps we ought not to fool around with the Judge.

17 MR. FRIEDMAN: I agree, and I would just as
18 soon not go through the process but state our position
19 now.

20 My legal position for the record is that I
21 disagree most respectfully with the Court, which of
22 course is my right, and whatever remedies I may have on
23 behalf of my client. I do say to your Honor if your
24 Honor overrules an objection--

25 THE COURT: I am not going to overrule it; I

1 am going to order him to go before the Grand Jury right
2 now.

3 MR. FRIEDMAN: I am telling you, if that is
4 going to be your order, he has told me that in response
5 to certain questions he will invoke his constitutional
6 rights.

7 THE COURT: I know he has told you that but
8 then in the other breath you tell me if I nevertheless
9 sign an immunity order, he will go to some appellate
10 court and claim I shouldn't have signed it.

11 MR. FRIEDMAN: No, no, what I am saying to
12 you is that he will then refuse to testify--that is
13 what he is going to do, is refuse to testify, claiming
14 that your Honor is wrong in signing that order and claim-
15 ing that his First Amendment rights and his right to
16 freedom of association is being violated.

17 THE COURT: Well, I will sign the immunity
18 order at this time, and I now direct Mr. Ciccone, based
19 upon my appraisal of these medical communications, to
20 take yourself to the Grand Jury right away and appear
21 there as a witness.

22 I did not believe yesterday, on the basis of
23 your own doctor's submissions, that there was any dis-
24 qualification in your case, any more than there is in
25

1 regard to any other citizen who has any reason for not
2 going to the grand jury under civilized conditions and
3 submit to the usual process of their questioning.

4 Having looked at another doctor's view, I
5 am reinforced in that judgment, and I direct you to
6 appear before the Grand Jury.

7 If and when Mr. Ciccone has then pleaded his
8 privilege, you may come back to me and I will sign the
9 order.

10 MR. ABZUG: Very well--and that will be ap-
11 proximately at 3 pm this afternoon.

12 MR. FRIEDMAN: If your Honor please, I would
13 like to indicate for the record that in my judgment, in
14 protecting Mr. Ciccone's rights, I understood that your
15 Honor was directing that a medical examination be had
16 for the purpose of determining what the medical opinion
17 was by the government-appointed or the government-
18 selected physician as to the condition of Mr. Ciccone's
19 health, concerning his ability to testify or not, or
20 any danger to his health. This report contains nothing
21 more than a diagnosis of his condition, and makes no
22 reference by opinion as to whether or not his health
23 would be impaired or not.

24 THE COURT: All right, but I have read it
25

1
2 and I make a different judgment based on that letter
3 to me and your doctor's letter.

4 And the direction to Mr. Cicone has already
5 been given, so I guess the thing to do now is to direct
6 all of you to repair to the Grand Jury and proceed ac-
7 cordingly.

8 MR. FRIEDMAN: All right.

9 MR. ABZUG: Thank you, sir.

10 (All parties leave the Court room
11 at this juncture).

12
13 (continued on the next page)
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2 (At 3.30 P.M., in open court)

3 THE COURT: This is in re Anthony Ciccone,
4 a witness before the Grand Jury. I guess it has no number.

5 MR. ABZUG: It is a miscellaneous matter,
6 your Honor. There is no number assigned to it yet.

7 THE COURT: And Mr. Abzug, appearing for the
8 Government, has asked me to sign an immunity order which
9 recites the circumstances and the authorization from
10 Washington.

11 And I gather, Mr. Friedman, that you have no
12 reason to present why I should not sign it, is that right?

13 MR. FRIEDMAN: Not other than what I presented
14 to your Honor on the first call of this matter earlier today.

15 THE COURT: All right. But now, Mr. Ciccone
16 has invoked his privilege and has refused to answer the
17 questions.

18 MR. FRIEDMAN: That is my understanding,
19 your Honor.

20 THE COURT: Is that right, Mr. Ciccone?

21 THE DEFENDANT: Yes, it is, sir.

22 THE COURT: All right. I am going to sign
23 the order, and I'm sure, Mr. Friedman, your client under-
24 stands what it means.

25 MR. FRIEDMAN: He does, your Honor. We

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2 discussed it at length.

3 THE COURT: All right.

4 And now, Mr. Friedman, before we went on the
5 record I think you had intimated to me that if Mr. Ciccone
6 goes back before the Grand Jury now, notwithstanding the
7 grant of immunity he will refuse to testify?

8 MR. FRIEDMAN: That's what he advised me,
9 on the same grounds that he stated before the Grand Jury.

10 THE COURT: Namely?

11 MR. FRIEDMAN: That by reason of his concern
12 for his health, as I understand it he says there is too much
13 stress and strain, and by reason of his Fifth Amendment
14 privilege, First Amendment rights and what he terms his
15 right to freedom of association, he would continue to
16 refuse to testify.

17 THE COURT: Well, I overrule his objection on
18 the ground of health.

19 I would think, Mr. Ciccone, just as an ordinary
20 citizen, just taking the question of health, your health
21 would be better if you went and testified and got out of
22 here than it will be if you keep trodding back and forth
23 before a judge. But that's for you to decide.

24 I don't know what the First Amendment means
25 in this setting.

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2 MR. FRIEDMAN: Freedom of speech.

3 THE COURT: I know what the First Amendment
4 is. I said I don't know what the First Amendment is in
5 this setting.

6 MR. FRIEDMAN: I think he means to say that
7 if he is asked about perhaps conversations he's had with other
8 people, he feels that there is no right on the part of the
9 Grand Jury under these circumstances to intrude upon that
10 privacy.

11 THE COURT: I see. All right. I overrule
12 that objection. Does he have others?

13 MR. FRIEDMAN: He also has asserted that this,
14 in his view, interferes with his right to freedom of associa-
15 tion and that he should not have to be interrogated concern-
16 ing those people whom he may know or otherwise associate
17 with.

18 THE COURT: But is this an organization thing?
19 What is the Government inquiring about? Gambling?

20 MR. ABZUG: Yes, your Honor, syndicated
21 gambling, your Honor, a gambling operation up in the East
22 Harlem area. It is not an organization in the sense of a
23 civic minded organization such as an Elks Club or something
24 like that.

25 THE COURT: The Government takes the position

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2 that the right to associate around a crap table is not the
3 same as the right to associate for religious or political
4 purposes?

5 MR. ABZUG: Yes, your Honor.

6 THE COURT: It sounds right. I overrule
7 that objection.

8 MR. FRIEDMAN: I don't know, Judge. Maybe
9 one would have the right to associate around their own
10 bridge table in their own home.

11 THE COURT: Yes. If they ask him about that,
12 come back.

13 Is there any other objection?

14 MR. FRIEDMAN: No, Judge. Those are the only
15 objections. And, as I say, if you overrule those objections,
16 Mr. Ciccone has asked me to indicate to your Honor that he
17 is prepared to waive the actual going before the Grand Jury
18 again to be asked those questions and he is prepared to
19 advise your Honor that --

20 THE DEFENDANT: It would be easier for me
21 than going down and up again.

22 MR. FRIEDMAN: He says it would be easier
23 for him.

24 THE COURT: I understand that.

25 MR. FRIEDMAN: And I think he means physically

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2 and mentally and he is prepared to stipulate --

3 THE COURT: I have to tell you, Mr. Ciccone,
4 that, having heard your stated reasons for not testifying,
5 I would be driven, or some other judge sitting here would
6 be driven pretty soon, to hold you in contempt for refusing
7 to answer, now that you've been granted immunity. And
8 then, rather quickly, at least on my understanding of your
9 case, one of us would be compelled under the law, and
10 specifically I think Title 28, Section 1826, to put you in
11 jail for the life of the Grand Jury or until you change
12 your mind and agree to answer.

13 Do you understand all that?

14 THE DEFENDANT: Yes.

15 MR. ABZUG: Your Honor -- I'm sorry. I
16 didn't mean to interrupt you.

17 THE COURT: Yes?

18 MR. ABZUG: Just so the record is clear, your
19 Honor, the question that was asked of Mr. Ciccone in the
20 Grand Jury that he refused to answer on the basis of the
21 Fifth Amendment privilege, and which he now, according to
22 our stipulation, would refuse to answer notwithstanding
23 your Honor's directive incorporated in the order, is whether
24 he knows an individual by the name of Thomas Mancuso.

25 He refused to answer that question before the

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2 Grand Jury and it is my understanding that he is refusing to
3 answer it now notwithstanding your Honor's instructions.

4 Accordingly, the Government now makes an
5 application, pursuant to Title 28, United States Code
6 Section 1826(a), to remand Mr. Ciccone forthwith into the
7 custody of the United States Marshal for the life of this
8 Grand Jury, which extends until April 15, 1977 - that is
9 approximately six weeks - and which may be extended, as I
10 explained to Mr. Ciccone's attorney and to Mr. Ciccone,
11 eighteen additional months. That is, it may be extended
12 three times in six month additional periods. But under no
13 circumstances would Mr. Ciccone be held in prison more than
14 eighteen months.

15 What I propose, your Honor, is this: that
16 your Honor enter that order orally and that the Government
17 prepare a written order, which I would submit to your Honor
18 at the end of the business day for signing. I would have
19 prepared it beforehand, but I didn't know Mr. Ciccone was
20 going to refuse to testify.

21 THE COURT: Mr. Friedman, do you want to be
22 heard in response to that?

23 MR. FRIEDMAN: I think procedurally, Judge,
24 I have no objection to the procedure that the Government out-
25 lines it intends to suggest be followed. I think the

positions are quite clear. Mr. Ciccone is aware of the fact that your Honor has the power to direct his imprisonment and has taken the position that he does in his own best judgment.

From my point of view as an attorney, somehow it seems to me, I might say, rather oppressive since, as I understand it, Mr. Mancuso I think is one of the people as to whom the Government has requested the Attorney General to authorize that an application be made to this court to grant such person immunity.

So that if the Government in fact has Mr. Mancuso available under subpoena and they intend to grant him immunity, if they want to ask Mr. Mancuso questions I think it is rather oppressive to ask to put Mr. Ciccone in jail when they might get their information first from Mr. Mancuso.

THE COURT: Oh, yes. You try hard, Mr. Friedman. But the Government isn't required to choose among the people from whom it will seek information.

MR. FRIEDMAN: I know, Judge. But --

THE COURT: If Mr. Mancuso comes here and refuses to answer, as Mr. Ciccone has, we may have to put him in jail, too. I hope that doesn't happen.

MR. FRIEDMAN: That may be, Judge. And I

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2 understand everybody's position and I might even say, for
3 whatever it is worth, we are all obligated to follow the
4 law. Somehow, way down deep in my lawyer's stomach it
5 hurts me to find the Federal Government has the power under
6 this kind of a statute, which is the subject matter of the
7 Grand Jury's inquiry, to even have Mr. Ciccone here over
8 apparently what is called a "crap game," not involving
9 interstate character.

10 And I've read decisions dealing with it. But
11 that is maybe another matter. I think it is kind of
12 oppressive. But maybe that's the way the law is going
13 today.

14 But Mr. Ciccone, to put it succinctly, under-
15 stands his rights, he knows the position of the Government,
16 he knows that there is a possibility that the Grand Jury
17 will be extended, and he has asked me to indicate to your
18 Honor those facts which I have indicated: that to save the
19 time of your Honor he is prepared to indicate that if he
20 were brought back before the Foreman of the Grand Jury, his
21 answers would be the same notwithstanding your Honor's
22 instructions.

23 I can only represent to you that which he tells
24 me, and so I do.

25 THE COURT: All right. Within the meaning of

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2 Section 1826 as I understand it and have lately been required
3 to administer it in still another case, nothing that has
4 been placed before me under the law, Mr. Ciccone, consti-
5 tutes just cause for your refusal to answer the Grand Jury's
6 questions.

7 That means, so far as I understand the law,
8 you don't have any legal right any more to refuse to answer.
9 And now that you are sticking to that refusal, I have the
10 legal duty as a judge to order you imprisoned in the fashion
11 that Mr. Abzug described, for the life of the Grand Jury or
12 until you answer. And I am so ordering.

13 Now, I think there is nothing further but to
14 remand Mr. Ciccone.

15 How long will it take you to get this order
16 donw?

17 MR. ABZUG: I can have it done within an hour.
18 There is a Marshal present, I believe, in the courtroom.
19 What I'll do, with your Honor's consent, is call the Marshal
20 -- or perhaps Mr. Ciccone can remain here and I'll call the
21 Marshals right now and get a Marshal up here to take Mr.
22 Ciccone into custody and then I'll bring up the order and
23 by the time you are finished here with this other matter I
24 should have it prepared.

25 THE COURT: The oral order is sufficient, and

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2 I'm addressing the Marshal as well as everybody else, to direct
3 the remand of Mr. Ciccone, and I do so direct, and when we
4 have the order here I'll affirm this oral direction by
5 signing that order.

6 MR. ABZUG: Thank you, your Honor.

7 MR. FRIEDMAN: If your Honor please, I would
8 like to be excused from that phase of the proceeding, if I
9 may, since it will be --

10 THE COURT: Which phase?

11 MR. FRIEDMAN: That is, your signing of the
12 order. I don't think you would require me to be here under
13 those circumstances. But Mr. Ciccone --

14 THE COURT: No, I don't have any purpose you
15 can serve.

16 MR. FRIEDMAN: Mr. Ciccone is aware, as I say,
17 of what happened. He has asked me to indicate to your Honor,
18 to the extent that your Honor has the power, to advise the
19 Marshal, of course, that Mr. Ciccone does receive medication,
20 including one known as phenobarbital, which he has with him
21 on a prescribed basis, and he requires the dosage which is
22 indicated on the prescriptions he has with him.

23 And we would like to make certain that the
24 Marshal is instructed that an appropriate procedure be
25 adopted so that the medication is dispensed by whatever

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2 authority will, I'm sure, take it from his person upon his
3 going into custody so that no physical harm comes to him
4 by reason of his not being able to receive his medication,
5 including the phenobarbital.

6 THE COURT: I think it is a good point.

7 Mr. Abzug, I am going to hold you responsible
8 for seeing to it that the people in the MCC are (1) given
9 copies of both medical letters that have been placed before
10 me and (2) are advised that the Court has directed, with
11 the greatest urgency, that all necessary measures be taken
12 at the MCC to give Mr. Ciccone the medication he needs,
13 whether it is medication that he has with him or substitute
14 medication of the same nature that the Government will supply
15 to handle the problem of his convulsions.

16 MR. ABZUG: Very well. I'll call Mr. Butler,
17 who is the Associate Warden.

18 THE COURT: All right. Anything else, Mr.
19 Friedman?

20 MR. FRIEDMAN: I have nothing else to say,
21 your Honor.

22 THE COURT: All right. Then I'm afraid Mr.
23 Ciccone is remanded, and I so order.
24
25

FRIEDMAN

AFFIDAVIT OF PERSONAL SERVICE

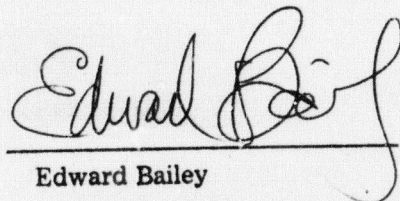
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

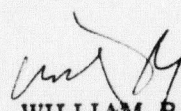
EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 11 day of May, 1977 at No. 1 St. Andrews Pl., NYC

deponent served the within *Appendix*
upon U.S. Atty., So. Dist. of NY

the Appellee herein, by delivering / true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
11 day of May 1977.


Edward Bailey


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978

COPY RECEIVED
ROBERT B. FISKE JR.
MAY 11 1977
U.S. ATTORNEY
SO. DIST. OF N.Y.